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### Gentz on the Liberty of the Press.

*Reflections on the Liberty of the Press in Great Britain, translated from the German of the celebrated F. Von GENTZ, Aulic Counsellor to the Emperor of Austria, and Author of "Fragments on the Balance of Power in Europe," &c. pp. 111. Bohle. London.*

The professed *Liberales* of India, where the word seems to have another meaning from that which it bears in Europe, having highly extolled this celebrated Work of the German Counsellor,—and the laudatory strains which were first poured out to his learning, his sagacity, his prudence, and his discretion, in this metropolis, having been eagerly copied into the enthralled and “slavery-courting” Gazettes (as Mr. Bentham would call them) of all the other Presidencies and Settlements of India,—we have thought it might be useful to show the Indian world what is thought of the publication so much eulogized here, by the least suspicious and most impartial judges in England.

We conceived that we were performing an imperious duty, when we ventured to question and to combat the doctrines taught by Mr. Gentz in Europe, and extolled by his admirers here; but though we confined ourselves purely to these considerations, our observations were construed into a desire to wage a war of hostility to the persons who propagated them, rather than to the doctrines themselves: as if it were impossible to entertain a difference of opinion on questions of policy and government, without breaking down the barriers of private friendships, a notion too absurd to deserve refutation.

Had the Work of Mr. Gentz been analyzed by the Edinburgh Review or the Morning Chronicle, we might perhaps have been considered as merely re-echoing the sentiments of that party in politics, to which we avow with pride that we belong. But we have a better, or at least a more unexceptionable authority to bear us out in the soundness of our opinions, that the Liberty of the Press is a real blessing in any and in every country,—that the freedom of the subject, nay, that good Government and the security of our natural rights cannot exist without it,—and that above all, it contains within itself the most powerful remedy for its own abuse.

To be able to cite so illustrious an authority as My Lord Hastings, whose every sentiment and whose every act is in unison with this doctrine, would of itself be enough to overthrow a host. To be able to add to this, as we have lately done, the concurring testimony of one of the most distinguished Lawyers of India, is another proud triumph. But when we show the Indian world that in one of the most firm and unbending Tory publications in England, warmly and zealously defending all the doctrines of that party, from principle and attachment to what they deem the best interests of the British Constitution,—when we show them, we say, that in such a Work, the Liberty of the Press is ranked among the greatest blessings that can be enjoyed in any country, and a Censorship deprecated as one of the most obnoxious, impolitic, and unjust regulations that can afflict any civilized state, we trust that the tongues of those who dare contend for the necessity of its existence will be for ever silenced.

But we had forgotten, that our object was not to shew what we thought of this subject, but to cite the authority of those to whose political school we do not belong. The article is from the Edinburgh Monthly Review, for the month of May last, and is as follows:—

“It was in an evil hour that Mr. Gentz published this pamphlet. Those who are acquainted with his former political writings are by no means prepared for the opinions which he has now expressed. For ourselves we confess, that but for the ingenuity of the argument, we should have doubted whether those reflections were truly ascribed to this eminent statesman. Having full upon our minds the liberal and enlightened views which have hitherto distinguished all his works—recollecting that it is he who so successfully asserted the just wisdom of our foreign policy during the two last wars—who so ably vindicated the great cause of national independence—and, so nobly roused the European powers to resist the tyranny of France, we certainly did not expect that he would ever appear before us to deny one of the most important rights which our constitution has secured to us—the Freedom of the Press.

It would perhaps be too much to expect that every man who possesses a knowledge of the just principles of international law, or of the interests which guide the foreign relations of the European powers, must on that account entertain just views upon subjects of municipal regulation. A skilful jurist, or an expert diplomatist, may be very ignorant of the principles which govern the civil institutions of a country, he may entertain very erroneous notions as to the principles of civil liberty, and very little sense of its advantages. But Mr. Gentz is something better than a mere expounder of the letter of the law of nations—he has higher endowments than those which are required to pen a fine state paper, or to carry through the articles of an advantageous treaty. To the labours of the practical politician, he has brought the spirit of a patriot and the liberality of a sound philosopher.

When we find such a man not merely questioning but condemning the system of a Free Press, which we always consider as the chief sign and security of a free people—when we find him maintaining the general expediency of prohibiting all publications which are not approved by a State Censor, which we consider as a tyrannical restraint, and utterly inconsistent with the rights of free citizens, we must regard such opinions as among those heresies that sometimes beset the understanding even of considerable men.

Any charge against Mr. Gentz, of having written this pamphlet merely in obedience to that government with which he is connected—or out of a mean obsequiousness to its known or supposed sentiments, is sufficiently refuted by the character of the man, and the tone of the work itself, and cannot be listened to for a moment. Nor should we have ever thought of the imputation, had it not been actually cast upon him. But it has come from the only quarter whence such a thing could have come without hazard—from the tools of a political faction, who think that the opinions of every other man are influenced by motives as sordid and degrading as their own. Mr. Gentz has, with an excellent spirit, declined and disavowed any reproach against the adversaries of his peculiar opinions, while he asserts his claim to an equal measure of candour on their part towards himself.

“We do not, therefore, mean to reproach those individuals, who, though favourable to the restraints of law, set a still higher value on liberty—who, were a sacrifice to be made, would rather make it at the hazard of tranquillity than at the expense of freedom—who, without directly approving the anarchy of the British press, or attempting to dissemble its injurious defects, regard that anarchy as an unavoidable evil, and the inconvenient concomitant of a preponderating benefit. Let them, however, be candid enough not to condemn as slavish spirits, and the tools of tyranny, those who, regarding the subject under the other point of view, are more apprehensive of danger to order than to freedom.”

He is an unworthy and ungenerous antagonist, who could refuse so fair a claim.

Nevertheless, the opinions advanced by Mr. Gentz in this pamphlet appear to us extravagant; and certainly his arguments, with all their ingenuity, are altogether fallacious. There is however, this remarkable merit throughout the whole—that he never mis-states or misrepresents the arguments which he sets himself to oppose. He meets them fairly and manfully, without any of the little artifices which are too often resorted to in political disputes. In this, at least, we recognise the style and manner of argument which have distinguished his former works.

Within the last few years, since the restoration of the ancient monarchy of France, it has been a question often agitated, Whether, under the peculiar circumstances of that country, it would not have been dangerous to allow a full and unlimited freedom of printing and publishing? It was a question which immediately engaged the attention of the legislative authorities there, and the law for imposing certain restrictions upon the press was vehemently and powerfully opposed. But all the arguments in favour of that law were founded, not on the general expediency of such restrictions, or the general dangers and disadvantages of an unlimited freedom of the press; but on the special ground, that in a country so unsettled, without some restriction or limitation upon that freedom, the public tranquillity would have been endangered. The great argument of danger was drawn wholly from the particular situation of France, and not from the general effects of a free press. Or if there were a few who supported the

new law on the latter ground, they were considered as the victims of inveterate prejudice—the advocates of opinions long since confuted, and they were therefore unheard. There is no opinion so silly—no argument so absurd—no paradox so monstrous, but you may find it maintained by some French pamphleteer in the face of all mankind. But even among the thousand French pamphlets which discussed this great question, we believe there was scarcely one which ventured to support the law on any other ground than the peculiar state of the country.

Mr. Gentz, however, is much more bold. He attacks the whole system of unlicensed printing. The great object of his argument is to prove the inefficiency of penal laws to correct or restrain the abuses to which a free press is liable, and to shew that the only wise plan is to subject the press to police regulations, so that nothing should be printed and published which had not first been thoroughly examined and approved by a censor, the servant of the government. This he proposes as a general system necessary to the safety and happiness of every state. He is not content that it should be considered as a system to be resorted to on some emergent occasions, to check the evils threatened in disordered states—as a temporary measure, severe, but salutary in critical and dangerous times. But he propounds it as of general and permanent wisdom—as necessary for all countries, at all times, and under all circumstances. If Mr. Gentz be in the right, a nation in which the happiness of the people and the security of the government does not require that the press be controlled by the magistrate, must be some imaginary republic—a new Utopia or Atlantis, with a race of men so happily tempered, that public or private libels could never be invented, or must be wholly harmless.

But the liberty of the press in Great Britain;—will Mr. Gentz make no exception for the policy of our laws? He will not. Nay, that he may meet with no refutation of his argument from that instance, he has taken care to be before-hand with his antagonists—and, by a course of reasoning as perverse as his proposition, he convinces himself of the advantages of a literary censorship, by—reflections on the liberty of the press in Great Britain!

The short account of this pamphlet is, that it sets out by shewing an absolute and unlimited freedom of the press to be a thing which never did and never can exist in any country; that there are two modes of restricting this freedom, the one or other of which must always be employed; namely, *penal laws*, to punish the abuses of it in works already printed and published; or *police regulations*, to prevent such abuses by prohibiting the printing and publication of improper works, the former being the system pursued in Great Britain, the latter that which has been adopted in France, and all the other nations on the Continent. After this, there comes a formal discussion of the advantages and disadvantages of the former system, as exemplified in England, divided into these three branches: 1st, The state of the law. 2d, The mode of enforcing it, or the force of action. 3d, The whole judicial process. And from the view which Mr. Gentz takes of the system under these three branches, he arrives at these formidable conclusions: *first*, that this law is a nullity; *secondly*, that the form of action is imperfect, inadequate, and oppressive; and, *lastly*, as to the judicial proceedings, that as they have placed the final decision of each case exclusively at the discretion of the jury, and that the juries have performed this critical duty in such a way, that, in their hands, the laws for punishing the abuses of the press have become, virtually, a dead letter; and, "neither the intellectual nor moral cultivation of the people can prosper."

Throughout the discussion which terminates in this melancholy denunciation of the state to which our system has reduced us, the advantages of a censorship are frequently pointed out and contrasted with the evils to which we are subjected. But it seems Mr. Gentz meditates a more ample exposition of the benefits of a censorship. This pamphlet is only the first part of his Dissertation on the Liberty of the Press; he announces a second Part, which is to contain an account of the state of the press in France, in which he is to conclude the whole subject with "some observations on the system of censorship."

The first position of Mr. Gentz, in favour of the censorship system, is quite extravagant. He undertakes to prove, that the freedom of the press is as much enjoyed under a state censor, as under the system of our laws; or, in other words, that the right of printing and publishing is as free where it is forbidden to all who do not obtain a special permission, as where it is open to all without any previous permission, and no man is accountable for the exercise of it unless he had made it the instrument of mischief. There is no such thing as absolute freedom in society, says Mr. Gentz; and he argues thus:—Freedom is a right: "every right becomes a social right,"—every social right is accompanied by some restriction, (for "a social right unaccompanied by restriction, is a thing scarcely conceivable");—therefore, no social right can be absolute or unlimited; therefore, "the unlimited freedom of the press is a non-entity." Having thus gallantly destroyed the *unlimited* freedom of the press, and reduced all laws relating to the press to limitations of its freedom, he brings up his censorship which shackles a whole nation, and our penal laws which touch none but convicted libel-

lers, as belonging to the same class. They are, in his eyes, parallel instances of limited freedom; and then comes a most notable conclusion.

"The question whether a country is better with or without the liberty of the press thus loses all importance, as in one sense it exists every where, and in another sense no where."

This is a rare discovery; a kind of reasoning, by means of which every question on Civil Liberty "loses all importance." For instance, if a discussion on the comparative merits of the Turkish and British systems of Government should be propounded;—and the liberty of the subject, under the latter system, be proposed for consideration, on Mr. Gentz's plan of argument it would first be proved, that "the unlimited liberty of the subject is a non-entity;" the Turk and the Briton would be classed together, as each enjoying a "limited liberty;" and finally, we should discover that the liberty of the subject is a question which "loses all its importance," as in one sense it exists both in Turkey and in Britain; and, in another sense, it exists no where.

Thus has Mr. Gentz, for the purpose of confounding, if possible, the broad distinction between the two opposite systems, under one of which the liberty of the press is secured and enjoyed as amply as any civil liberty can be secured or enjoyed, and under the other of which that liberty is completely destroyed, resorted to an argument as silly as any for which a school-boy was ever to be flogged. How he could have descended to such puzzling and quibbling about this one little point, which, after all, would not have advanced him one step towards his main object, we cannot understand. It is not only unworthy of his splendid talents, but even of this pamphlet itself—the meanest work of so great a master.

It is too late to call those definitions of the liberty of the press "conventional and popular," which ascribe it to those states alone in which there is no law imposing any *previous restraint* on the exercise of the right of the press. It is in vain to talk of the liberty of the press, even in the most limited sense in which the word *Liberty* can be used, as existing in those countries where the law prohibits the right of the press to every man who has not submitted his work to the approbation of a censor. When Mr. Gentz attempts to confound the two systems, he mistakes the great principle of the English law.

The doctrine established by the common law of England is this, that every man has the right of printing and publishing what he pleases. It neither asserts nor recognizes any authority to prevent or curtail that right, any more than the right of speech, or any other right. But if the right of printing and publishing be maliciously or wilfully used to the injury of any third party, that injury the law will avenge. The punishment which the law inflicts for the abuse of a right, cannot, in any fair sense of the word, be considered as a *restraint* upon that right. The law of England, therefore, by punishing abuses of the press, is no more a restraint upon the liberty of the press, than, by punishing those who speak slanderous words, it restrains the liberty of speech. The restraint upon either is no more than the party chooses to consider it; that is to say, in a legal and positive sense, it is no restraint at all.

But in a country where the law *prevents* the exercise of the right of printing and publishing, unless he who wishes to exercise it has obtained a special license for that purpose, the liberty which is enjoyed under the other system is absolutely withheld. There is a legal and positive restraint upon it; not a restraint of that moral kind which operates only to the extent which the party chooses, and is induced only by the dread of being punished for the wilful injury of a third party; but an absolute restraint, a positive legal prohibition.

Under the latter system the press becomes the engine of the government. To talk of the right or liberty of the press as existing under such a state of things, with certain legal limitations, is mere trifling. The great principle of such a system is the positive prohibition of the right to prevent the possibility of its abuse. It is quite clear, therefore, that under the British system, the liberty of the press is enjoyed in as absolute and unlimited a manner as is conceivable of any right in civil society; and that the system of a censorship, or submitting the press to police regulations, prohibits the exercise of that right by a restraint as positive as any that can be put upon any civil right. All attempts to confound the two systems under the common description of limitations to a natural right, are frivolous and vain; and we are sure Mr. Gentz would not have hazarded any such attempt, if it were not that he mistakes the principle of our law.

There cannot be a more fair method of discussing the merits of the opposite systems than by examining the effects of each in their practical application. Although we in this country have long considered their comparative merits as finally settled in favour of our own, we cannot object to accompany Mr. Gentz in an examination of the subject, in which he professes that it is his object to make us better acquainted with the system which we approve.

Measures, which have the press for their object, ought to be examined on more than one side. It would be fruitless and absurd to persist in judging them exclusively by their effects on authors. Reasonable men, of all parties, admit in this as in all similar cases, that the claims of individuals are not to be satisfied to the injury of society, and that nothing prescribed by authority is

worthy of the name of legislation, which does not unite public security with private freedom. A system that, in order to avert every danger, should scarcely permit the press to breathe, would not be more blameable than that which, from excessive forbearance towards individuals, should endanger public tranquillity, and the existence of the state. The worst of all would indisputably be one which should sin equally both ways. Examples of this kind will, perhaps, be met with in the course of our investigation."

The whole of this passage is material. The first part of it unfolds the plan on which Mr. Gentz conducts his inquiry. But the latter part of it is the most remarkable; for he not only prepares us for a full and impartial examination of the subject in all its bearings, but gives us a general notion of the light in which he regards the operations of our law. That worst system which he describes as one that "sins equally both ways;" which "scarcely permits the press to breathe;" while "from excessive forbearance towards individuals, it endangers the public tranquillity, and the existence of the state," is one of which his investigation really furnishes him with an example; and the example which he produces is the system which the English law and constitution has established. It will not appear so strange, that he has been grossly mistaken in his example, when we come to mention the guides which he chose to assist him in his investigation.

A foreigner who treats of our law and constitution has need of much indulgence. Besides the ordinary mistakes to which he is liable, from the want of those facilities and opportunities which are commonly enjoyed by those who belong to the nation of whose institutions he treats, many allowances must be made on account of the nice and complicated structure of our constitution, and the very peculiar principles of our law. If the subject which he undertakes be purely legal, but especially if it relates to the common law of the land, the chances are greatly against his avoiding the numerous mistakes into which he will be apt to fall at every turn. If the subject be some one clear and definite written law;—if it lie within the compass of an act of Parliament, the difficulties are comparatively few. But when it relates to our common law, the *Lex non scripta*, the unwritten law which is treasured up in the records of judicial decisions, there are so many false lights and conflicting authorities, among which a stranger to our law may be unable to find his way, that we must regard his titillation and mistakes with an indulgence that would be ill bestowed on those who have occasioned the perplexity.

No man could be more unhappy than Mr. Gentz in the choice of a guide to the knowledge of the English law of libel. With every just allowance for the chances that he might make a bad choice, we can hardly think him excusable for that which he has made. If he had picked up some treatise of small authority, but authenticated by the name of some lawyer, and was deceived by his mistakes, we should not have wondered. Or if he had lighted upon a straggling volume containing reports of the few cases which are exceptions from the general doctrine and principle of the law, he might have been well excused. But we are sure the reader will hardly guess from what source Mr. Gentz has derived his knowledge of the English law; not from Hale, or Hawkins, or Coke, whom he must know, or ought to know, are the great lights of that law; not from any of the illustrious commentators of the latter times, whom he ought to have known, or for whose works he should have sought; not from any of the numerous digests and abridgements of the law, which he might easily have found; not from any of the recent treatises on this branch of the law—but from the *Edinburgh Review*—from two anonymous essays in that Journal, written to advocate the temporary opinions of a political party. Whatever might be the merit of these essays as ingenious speculations, their very nature and form were warning enough against any reliance on the accuracy of those representations of the state of the law, which he saw used to serve the purpose of a political argument. But that no warning might be wanting to the most unwaried, the main positions and opinions in the two essays were directly contradictory. However, Mr. Gentz having taken his notions as to the state of the law from such authority, has been led though a strong series of mis-statements and mistakes to his favorite position, that our libel law is a mere nullity.

The first great mistake which he commits is as to what the law considers an offence against the press, and will punish as an abuse of its freedom. He very rightly states, that whatever the law considers as an abuse of this kind, is described as a *calumnious publication* or *libel*. But he contends, on the authority which we have mentioned, that our law is so miserably inefficient—so useless, for all practical purposes, that it does not even supply the means of deciding what is and what is not a libel.

"Would not any one expect to find the distinguishing marks, the legal character of a libel precisely determined by established rules, or at least defined, with such a degree of correctness, as to leave no uncertainty in ordinary cases, and afford even in such as might be doubtful, a certain guide to the interpretation of the judge? Such, however, is by no means the case."

"The definitions given by the highest legal authorities of the abuse of the press, or of what constitutes a libel, all bear, without exception, the stamp of the uncertainty of the law."

He then retails the definitions which one or the other of the essayists chosen from our law-books as most likely to suit his purpose. One of these is an insulated passage from Comyn's Digest; another is a new definition with which the essayist has favoured the world. The passage from Lord Chief Baron Comyn is as follows: "A libel (*libellus famosus*) is a contumely or reproach, published to the defamation of the government, of a magistrate, or of a private person." Every man acquainted in any degree with the laws of England, knows the authority of Chief Baron Comyn to be very high. But though this passage is one of the most wide and general descriptions of the offence which is given in any of the books, yet every one who has read that part of the Digest must know, that in the context whatever is loose in the first sentence, is narrowed to the closest meaning by the accurate statement of what has been construed by the courts to be libellous, and of those apparently dubious cases where the libellous construction was over-ruled. But even if it were true (which we by no means admit) that Comyn's description was too vague, that is no proof that our law affords no better description. It is but abusing the name of so great a lawyer to quote an imperfect sentence from his work, and charge the imperfection against that law of which he was so profound a master.

Another great lawyer is treated in the same way. Indeed, in an attack upon this branch of the English law, in which the chief Baron Comyn is thus maltreated, it is no wonder to find that Judge Blackstone is grossly abused. This we are sure is done by Mr. Gentz through mere ignorance, and is one of the blunders into which his chosen guides have led him. Being as anxious as the essayist to prove the defects of our libel law, he follows him in fastening upon this sentence in the commentaries: "Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal; he must take the consequences of his own temerity."—And this being most unwarrantably taken as all that Sir William Blackstone can give for the definition of a libel, Mr. Gentz thus expresses himself upon it.

"The thing most remarkable in this nothing-defining definition, is the word *illegal*, used in a country, where, according to the universal declaration of all persons conversant in the subject, no rule of law has yet determined what is to be considered a libel."

What wonder is it that our law is abused where the author of the Commentaries is thus handled? The name and reputation of Sir William Blackstone must be known, wherever it is known that there is law in England. It would therefore have been a very prudent precaution on the part of Mr. Gentz, to have looked into that book from which this passage was quoted, before he ventured to turn it against the author, or against the law of which he treats. If he had done so, it would have saved him from the ridiculous mistake into which he has been betrayed, of passing over Sir William Blackstone's definition entirely, and taking up another passage in its stead. The definition thus passed over is as follows:

"*Libels*.—*Libelli famosi*, are malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule." 4 Bla. Com. 160.

A more clear definition for all practical purposes was never given of any offence in text or commentary, code or statute. It comprehends a description of every thing which the law will punish as a libel, it describes nothing which is not punishable as such.

If Mr. Gentz had but known that there was such a passage in Blackstone's Commentaries, he never could—we are sure he never could have so far committed himself as to assert, as we see he has done, that in our law the offence of libel was not defined: "with such a degree of correctness as to leave no uncertainty in ordinary cases, and to afford even in such as might be doubtful, a certain guide to the interpretation of the judge."

But having, under the authority of his chosen guides, by these mis-statements and mistakes, laid it down as a settled point, that our libel law is so poor a system, that no man can extract from it even a definition of the offence, Mr. Gentz, under the same high auspices, proceeds thence to fall at our law, as completely silent on the subject of libels:

"It would be waste of time to dwell on the deficiency, uncertainty, and worthlessness of this and all other definitions of the same description, or to enter into any detailed proof of the very unfair and severe treatment which authors must suffer, or the serious dangers to which the State must be exposed, under such a complete silence of the law, according as caprice or power may incline the balance to one side or the other."

If this be a true representation of the state of our law—if it be true that it can never be enforced without unrighteousness and severity towards authors, or danger to the State, we might give up the whole at once. It would not be worth any defence. We might allow Mr. Gentz, and the other advocates of the censorship, or the advocates of the opposite system of free-libelling, to pull it down and trample upon it to their hearts content.

But it is not a true representation of the state of our libel law. When Mr. Gentz gives it as a description of our system, he shews himself completely ignorant of its true nature. That "detailed proof," into which he says it would be "waste of time" for him to enter, he could never have found. If he had searched for it, his time would not have been mispent; on the contrary, he would have learned to save that portion of it which he has wasted in writing this pamphlet to abuse a system which he does not understand. Let him look through the cases which are stated in the books which report the decisions of the English Court on matters of libel. The number of those thus recorded, is somewhere about two hundred. He will there find, that instead of that "complete silence" which he imputes to our law, it has spoken, in all these cases, in the same voice upon this subject, and that the Judges and Juries, its administrators, obeying its dictates, instead of dealing unfairly by authors, and exposing the State to danger, have never punished harmless writer, and never spared a libeller to the danger of the State.

Mr. Gentz, however, mentions four instances of the impotence and inefficiency of our libel law. The cases which he cites are those of Wilkes, Junius, Cobbett, and Hone. In the first, he is very unlucky. Wilkes is certainly one of the most distinguished libellers that ever appeared in this country; but we cannot conceive how Mr. Gentz happens to bring him forward as an example of the inefficiency of our law. In no one of the several libellous offences for which he was tried did he escape unpunished. In that particular instance which Mr. Gentz had cited,—the famous libel against the King in the 45th number of the North Briton, he was tried and convicted. Mr. Gentz notices the parliamentary proceedings against him, but omits to state, what he could hardly be ignorant of, that he was tried and convicted for the libel before the Court of King's Bench in Easter Term, 1763. What then does Mr. Gentz mean by saying, that "the libellous character of the North Briton, was not then made the subject of investigation before any tribunal, but was decided by the authority of parliament?" That is a complete mis-statement of the fact.

If he had consulted those books from which alone he could derive that knowledge which would enable him to pronounce upon the merits and efficiency of the English law of libel, he would have found, that not only Wilkes himself was convicted, as author of the libel, but several other persons who published it. In the same term, one Kearsley was convicted for printing and publishing the North Briton, and suffered the punishment which Wilkes escaped, by having fled beyond seas. And in the next year, another person, John Williams, was tried, convicted, and punished, for re-publishing the same libel. The North Briton itself was burned by the hands of the public executioner. In short, if we were constrained to rest the whole merits of our libel law upon any one case, to exemplify its efficiency, we might be content with this very case of Wilkes, which Mr. Gentz adduces for a different purpose. In that single case there is enough to overthrow his whole argument.

The case of Junius is the next,—and he is just as unlucky with respect to it. But he has drawn a picture of that famous libeller, so strong, and in most respects so true, that we must extract it.

"In the year 1769, there appeared, under the fictitious and still enigmatical name of Junius, one of the most formidable and atrocious libellers which England or modern times had ever known. With talents and knowledge of the first order—an eloquence seldom equalled and never exceeded—an audacity exceeding all moderation and bounds—and a malignity which left Milton's devil far behind—this mysterious fiend kept the British public, for two years, constantly on the rack, between pleasure and disgust, admiration and horror."

"In a series of overwhelming and lacerating letters, he attacked, with equal bitterness and violence, the members of the cabinet; all the officers of State, high and low; all persons engaged in public affairs; the courts of law; both houses of parliament; and, at length, even the sacred person of the king."

It is one of the great excellencies of our law of libel, that it punishes the publisher as well as the author of a libel. In the case of anonymous publications, or where the author does not appear, or is concealed and unknown, the injury will not go unpunished, although the principal offender cannot be found. The law, by acting on this just principle, prevents the frauds which would otherwise be practised to the constant injury of private persons, and to the danger of the public peace. But it is impossible to take away that disposition of leniency which must always actuate a jury in favour of the mere publisher of a libel, whom they regard as the accessory to a crime which is committed in the exercise of an honest profession, without any mischievous intention. Much public injury has certainly been wrought by the operation of this disposition.<sup>10</sup> But we must be content that the law has provided a remedy in those cases, where it operates to the acquittal of an offender who has notoriously violated the law.

In the case of *Jubus*, the printer and publishers were alone within the reach of the law.<sup>11</sup> Mr. Gentz mentions the case of Woodfall, the original publisher of Junius's libel against the King, to prove his favourite position, that our law for the punishment of libel is a "nullity." One instance of the acquittal of an offender whose guilt was proved,

would certainly be nothing decisive against the system of the law on which he was tried. Juries, as well as judges, are subject to the infirmity of our nature so far, that they may not always be able to subject occasional caprice to permanent reason. In the case of Woodfall, the verdict of the jury was—"Guilty of printing and publishing only." This if it had been a good verdict, was tantamount to an acquittal. But what followed? The verdict was not allowed to stand; it was *assailed and declared void*. So far, then, is this case from affording any support to the general inventive of Mr. Gentz against our law, that we adduce it as an instance to prove its admirable perfection in providing the means of rectifying those mistakes which occasional and temporary causes may produce. Woodfall was not the only offender who was subjected to prosecution for publishing Junius's libel against the King. And here, again, we must say that if Mr. Gentz had consulted any of the authorities which could furnish him with such information on our libel law as would entitle him to pronounce any opinion as to its merits, he would have found that Almon the bookseller was tried in the same year, and in the same term, and before the same court with Woodfall, for the very same offence,—was found guilty by the jury, and was sentenced to pay a fine and find securities for his good behaviour. In short, the cases of prosecutions for the libels of Junius, instead of proving any thing to support Mr. Gentz in his inferences against our law, prove its excellent efficiency.

The next case put by Mr. Gentz, is that of Cobbett. How any man could produce Cobbett as an instance of the inefficiency and nullity of our libel law, is quite extraordinary. Cobbett! the very libeller, who perhaps of all libellers, has smarted most severely under the just sentence of the law—and though most severely, never beyond the extent of his deserts. Mr. Gentz is really quite inexcusable for his ignorance, if he really is ignorant how often Cobbett was tried for libels—that he never was tried without being found guilty—fined and imprisoned according to the enormity of each offence.

But we are glad he has mentioned the case of Cobbet. It gives us an opportunity of pointing out the excellent effects of a free press. What does Mr. Gentz himself say of the fate of this convicted libeller?

"At length borne down by the weight of his own misdeeds, and deserted even by his former partisans, he made his escape from England."

The truth is, Cobbett was fairly written down. Through that free press, of which Mr. Gentz so little understands the value, all the falsehoods of Cobbett were exposed—all his calumnies refuted—all his writings made the scorn of the country, and his name turned into a word of execration and reproach.

In the case of this one man, we have held up to us an example of the efficacy of our penal laws for punishing abuses of the press—and of the salutary effects of a free press, as containing in itself the means of counteracting the mischief of those abuses.

Last of all comes the case of Hone. And we must confess, with sorrow, that it is a case which blots the proud annals of the English law. It has been said, that the verdicts of Juries on criminal cases, are the best index of the current of public opinion. The case of Hone is an exception against the general truth of this remark. The verdicts by which Hone was acquitted, struck all good men with surprise and horror. At the trial of that man, it seemed as if the administration of the law had been placed in the hands of that mob which was permitted to assemble in the court, and insult the judges, the laws, and the Christian religion.

But this case affords no general evidence of the nullity or inefficiency of the law. If the juries in that case found a safe verdict, the fault was with them and not with law. "The jury," says Blackstone, "have an unquestionable right of determining upon all the circumstances, and finding a general verdict, if they think proper so to hazard a breach of their oaths; and if their verdict be notoriously wrong, they may be punished."

That hazard as it is, these juries incurred. The libel act (32 Geo. III.) has given juries the power, in such cases, of pronouncing a verdict on the whole matter of the libel, without being compelled to find the defendant guilty on the mere proof of publication. The wisdom of this provision of the legislature is beyond all question. It has been the most powerful protection of the judges, and has relieved them from the hatred and suspicion of the vulgar. But it has fearfully increased the responsibility of the jury; and has cast upon them the exercise of that most difficult discretion, which must direct them between the power of the prosecutor, and the subtleties of construction by which every ingenious defendant can produce so deep an impression.

The libel act, by exposing juries to the extraordinary chances of deviation from the influence of one or other of these causes, has thrown upon them the heavy responsibility of following the plain but narrow path of the law. According to the dictates of that law, they are bound by their oaths to decide. Judging from those great marks which make it so easy in this country to ascertain the current of popular opinion, we think no man can hesitate to say—it was the sentiment of the great body of the people of England, that the juries which pronounced the bias-

phemies of Hone to be guiltless, were completely misled—that their verdicts were against the law.

How far, *in favo conscientie*, these juries were excusable, is another matter. How far they were amenable to the law which directs, that a jury finding a false verdict may be punished, is a question of law on which each individual is at liberty to form his own opinion. How far the law officers of the crown were justifiable in neglecting any proceeding for the revision of the verdict, is a question of policy, depending on a knowledge of circumstances with which few besides themselves can be acquainted. But this much must be said—that the guilt which the juries upon their oaths refused to pronounce against Hone, he subsequently took upon himself. For that outrage against religion, of which the juries pronounced him guiltless, he offered an apology to the public. He abandoned his illegal and infamous traffic, and this was the expiation of his offence—it was an homage to the public opinion; for he felt that the acquittal of the jury left him guilty before the public, and that the public stood by that law which the juries had refused to enforce. And to what does Mr. Gentz think this influence of the public opinion was due? It was to the LIBERTY OF THE PRESS. Every respectable newspaper, almost every periodical work, whether published in the metropolis, or throughout the country, cried out with one voice against the verdict of the juries; and before the great tribunal of public opinion, thus expressed through a free and unlicensed press, the libeller and the blasphemer felt himself convicted.

These are all the cases (out of the many reported in the law books) which Mr. Gentz has mentioned in his reflections against the liberty of the press in England. A more accurate examination would have convinced him, that the true inference from them is not against the system of our law, but decidedly in its favour. The variety of complexion in each case proves the various excellencies of the means which that system provides for correcting the abuses of the press; and instead of his conclusion, that the state of the law in a nullity, they prove its efficiency, even to the providing means for rectifying those mistakes in the administration of the law, which every human tribunal may occasionally commit; they prove that the great principle on which that system is founded, namely, the liberty of the press, can operate so as to provide a remedy for the misbehaviour or fallibility of juries; to give a power to public opinion which can strike awe into the mind of an unpunished criminal, and avenge that offence of which, by the administrators of the law, he has been wilfully or corruptly acquitted.

On these cases we are willing to rest the refutation of every thing that Mr. Gentz has said of the state of our law. But we are far from affirming that the state of our law on this subject is so perfect that it admits of no improvement. Attempts have indeed been made from time to time to persuade the legislature to adopt measures for modifying the law; but the object of those attempts has been, not to provide against the abuses of the press, but to protect those who abuse it. Of this kind was the Bill introduced into the House of Common in 1816 by Mr. Brougham. The chief object of that Bill was to overturn and abolish the whole practice of *ex officio* informations,—a practice as old as the Common Law of England. It is not necessary here to extol the merits of that process; but we may say, that mere antiquity is not its highest praise. The experience of a long course of years has proved its utility. But Mr. Brougham's Bill, in its havoc on the ancient and venerable fabric of the Common Law, went farther than to pull down the *ex officio* information; it contained a clause abolishing the distinction between written and spoken slander,—as if it were as great a crime to speak slanderous words to the ear of one man as to print and publish them to the whole world; and finally, that no part of the old Common Law practice against libels might remain, the criminal prosecution was to have been put on the same footing with the civil action in personal libels, by allowing the defendant in *all cases* to give the truth of the statement in evidence, at the same time allowing the jury to find the defendant guilty although the truth was proved. This Bill was not hastily disposed of. But after a whole year of consideration, it was rejected by the House in the session of 1817. Those who wish to have some notion of the mischiefs which this Bill would have occasioned, had it been passed into a law, may consult the speech of the Attorney-General in the debate which terminated in its rejection.

At other times the legislature has been called upon to produce a law which should define the offence of libel as accurately as the Stat. 25. Edward III. has defined treason. Mr. Gentz himself considers this as ridiculous, and says it is impossible. The truth is, it is not necessary. For all practical purposes, the common law has defined libel just as accurately as the Stat. Ed. III. has defined treason.

But all these attempts to change the law of libel have proceeded on the same mistake into which Mr. Gentz has been led as to its principle. Their object was to extend the liberty of the press; and the argument on which they were recommended was, that by the course of the law, the liberty of the press was hampered; that any degree of freedom which was used in the discussion of public measures was due entirely to the clemency or timidity of the government. All this is in point of fact a complete mistake. The system of our law which punishes nothing as an offence against the press, that has not been actu-

ally printed and published, is such on principle that it never can infringe upon the liberty of the press. Among the hundreds of cases in which the decisions of the Court are reported, there cannot be produced one single instance of punishment inflicted on an innocent or harmless publication. If a publication which discusses political measures and the conduct of public men, imputes no more than *honest error* without *moral blame*, it is no libel;—by the law of England it never has been, and never can be considered an abuse of the freedom of the press. And who would wish to see the freedom of public discussion carried farther? If it goes farther, and any writer chooses to attribute corrupt motives, or to vilify the personal character of any man, that is a calumny and a libel,—as such the law will punish it. To talk of the press being hampered, when the law will notice no more than this, is ridiculous; and those attempts to cripple the common law, by statutes for extending the liberty of the press, when it is already fully enjoyed, tend to nothing but the impunity of libellers, and to place that liberty beyond the reach, and therefore beyond the protection of the law. If ever this is done, there will be an end to the freedom of the press.

The true tendency of the arguments thus adduced in support of such extensions of the liberty of the press, is against the whole system of penal laws for punishing its abuses. Mr. Gentz saw this very plainly, and therefore he has adopted the very same arguments, and drawn them to their natural conclusion. The defects which they impute to the English law of libel, would, if they really existed, be decisive against the whole system of that law. For those who called for a statute of libels on the scheme of the statute of treasons, argued as if the common law of libel was so poor a thing that it could not even furnish a definition of the offence which it pretended to punish. The others who cried out for an act to protect the freedom of the press, held up the law as such, that no man who ventured to discuss public measures was safe, that our boasted freedom of the press was but a name, that the law of libel was a monstrous oppression. Both these representations of our law exactly suit the purpose of Mr. Gentz; he takes them both as true, on the authority of the two anonymous essayists. And though one of them partly corrects the mistakes of the other, nothing less would content Mr. Gentz than to mix up the blunders of both. In this he has certainly dealt rather hardly by them, still more hardly than they dealt with the law; for when he puts together those contradictions, which make it plain that both were grossly ignorant of the principles and doctrines of the law, he turns round and calls the one “*a writer who is well acquainted with the subject!*” and the other, “*a deeply learned and practical lawyer!*” We say that Mr. Gentz has in this dealt hardly with the essayists, for these epithets must be applied to them by way of sneer; and Mr. Gentz has too much perspicacity to be duped by the pedantic folly which quotes a long catalogue of cases and contractions: (such as, *Rex v. Creevy, Lanc. Ass. Spring 1813, con. Leblanc I. and in B. R. vid. M. &c.*) to bolster up a bad argument, by imposing on the simplicity of laymen, and strutting before the vulgar with a show of learned authorities.

After having thus satisfactorily shewn the nullity of our law, Mr. Gentz proceeds to prove, 2dly, That our form of action in libel cases is oppressive, and, lastly, that it is powerless, by the whole decision being committed to the jury. These positions he proves just as much as he has proved the first; that is, not at all. But we shall not follow him into all that he has said under these two heads, because they are of small importance with reference to the great object of his pamphlet, which is to discredit the whole principle on which our law punishes abuses of the press, as opposed to his favourite scheme of preventing those abuses by the shackles of a censorship. If the state of our law be such as he has represented it, all discussion about the form of action and trial by jury are needless. Where the law itself is a nullity, no mode or form of administration can make it efficient. And, if we are to have done with our old system, if we are to throw away the law itself as useless—*ex officio* informations, actions, indictments, and trial by jury may be flung after it.

But as Mr. Gentz set out with charging against our system, that it “sins equally both ways”—“that it scarcely permits the press to breathe;” while, “from excessive forbearance towards individuals, it endangers public tranquillity and the existence of the state,” we must notice what he says of the form of action. Having convinced himself that the law is a nullity, and that it enables juries to acquit any individual, however guilty, he thus fastens on the law and the jury the sin of dangerous forbearance against our system. But so far as we understand his argument, the other sin, of “scarcely permitting the press to breathe,” must be charged entirely against the *form of action*, meaning thereby exclusively *ex officio* informations. Now, really, we do say, that when Mr. Gentz, talking of this country, pretends that there is any form of action which scarcely permits the press to breathe, it is quite extravagant. We contradict him from his own pamphlet. He mentions, (p. 48.) very truly, that some years ago, almost every newspaper published in London was at the same instant under prosecution by informations *ex officio* filed against them by the Attorney General. If any employment of this form of action could have “stopped the breath” of the press, surely this violent and extraordinary recourse to it against

twenty political writers in one day would have been sufficient. But what was the consequence? Were the libellers silenced? So far from it, that Mr. Gentz himself acknowledges that those very writers against whom the informations had been thus filed became more violent than ever, they attacked "not only the ministers and their measures, but even the Attorney General and the courts."

We have seen that he considers his system of censorship as one species of the liberty of the press. In the same way, he considers judges and juries as a species of censors.

"It is however, evidently necessary to confide this difficult duty (of pronouncing on the political tendency of a publication) to some authority in the state, unless it be resolved to leave the press entirely to itself; and if political or police censors are to be abolished, there is no alternative but to establish judicial censors. But let us not deceive by names. A judge, in so far as he declares a work to be fit or unfit for publication, innocent or criminal, becomes a censor, in the fullest sense of the word; and he pronounces his judgment in his censorial, not in his judicial character. Thus it follows, that the guarantee of both personal freedom and public tranquillity, in so far as respects the press, for it would be evidently absurd to expect that guarantee from an undefined and undefinable law, is, at last, founded solely on a censorship, in whomsoever that authority may be placed, or at whatsoever time it may be exercised.

"The judicial censorship, it is true, takes cognizance of those writings only which, in consequence of their offensive or dangerous nature, are brought before the court by officers or agents of the executive government; and to this circumstance it is indebted for a great part of its popularity."

This may be very ingenious, but it is unfounded in fact. The whole of this fancied resemblance, like his argument to shew that the liberty of the press is enjoyed every where and no where, is mere quibbling. The broad distinction remains; and by the law which interposes the restraint of a censor between every man and the right of publishing his opinions, the freedom of the press is destroyed, under the law which acknowledges no such restraint, that freedom is established. The law which notices nothing done in the exercise of the right of publishing, unless it be done to the injury of a third party, in the positive meaning of the term, leaves the right unrestrained; and when it punishes nothing but the abuses of that right, the freedom of the press is secured.

Throughout the whole pamphlet, Mr. Gentz confines himself to political libels. Those against the Christian religion and against private persons, are, it would seem, under the system of censorship left to their fate. This, we believe, is a modern improvement; for censors and their licensees are no new invention. Though they were tried in this country during the time of Cromwell, as well as at other periods of misgovernment, they never came into fashion, and were always found unsuitable to our genius and constitution. But we believe that they were never tried here on the plan of allowing immoral and irreligious works to pass free. Even the licensees of the older authorities in foreign states, though they did not perhaps overlook politics, seem to have been more exclusively directed to morality and religion. We have the certificate of the Chancellor Cini in this form: "I see nothing in this work athwart the Catholick faith and good manners."

But we stand by the principles of our law, which all the reflections of Mr. Gentz have not been able to shake. Something we may wish to see amended with respect to its administration. We may wish that some more speedy and effectual means were provided for the punishment of those vile disseminators of sedition who infest the press, and poison the minds of the lower orders. We may lament the carelessness and negligence of those who ought to have instituted the proceedings which the law now directs for punishing these abuses. But when the great question is agitated as to the policy of an unlicensed press, and when the system of censorship is extolled, all these little defects sink into nothing, if contrasted with those great and lasting benefits, secured by the principle of our law which establishes the **FREEDOM OF THE PRESS**.

### River Niger in Africa.

*Observations on the Information collected by the Ashantee Mission, respecting the Course of the Niger, and the Interior of Africa. By Hugh Murray, Esq. F. R. S. E. Communicated by the Author.—From the 1st Number of the Edinburgh Philosophical Journal, published in June, 1819.*

It has been justly observed, that in the most important human concerns, more is occasionally effected by chance, than by the best laid plans. After the failure of successive efforts to explore Africa, the present mission, prompted by a mere local and accidental cause, has disclosed information respecting the most interesting regions of the interior, much greater than had been obtained by any of those, undertaken since the first journey of Park. Its intelligence has also tended to dispel the damp which our expectations had begun to receive, respecting the unknown portions of Africa. In population, culture, and the arts Ashantee decidedly surpasses any of the yet explored native states; and Mr. Bowdich received information, of a long suc-

cession of kingdoms, stretching far to the north and east, several of which appear to be superior, and the whole, on an average, equal in these respects to Ashantee. This space reckoned from that country northwards to Houssa, and from Bambarra eastwards to the frontier of Bornou, may be calculated at a million of square miles. Supposing the whole as populous as Ashantee, which is reckoned to contain a million of inhabitants in 14,000 square miles, or 70 to the square mile, we should then have seventy millions, in a space which does not perhaps exceed tenth part of the continent. This is one of the largest masses of connected population to be found in the globe; and one which presents such peculiar features, as to deserve well to be studied and known: Its comparative civilization is indeed alloyed by features of deep barbarism:—the continual and furious wars,—the absolute power of the chiefs, and entire slavery of the body of the people;—in particular, the frightful extent of human sacrifices. There appears, however, to exist in Ashantee at least, an anxious wish to emerge out of this condition, and to assume a higher place in the scale of nations; so that this region appears to offer an advantageous field for the exercise of that highly laudable zeal which has long shown itself in this country, for the improvement of Africa.

Interesting as these considerations are, it is not my intention at present to pursue them farther, but to confine this essay to illustrate the information collected by Mr. Bowdich, respecting the great geographical problem of the course and termination of the Niger. He found the capital of Ashantee crowded with Moorish merchants, many of whom had repeatedly crossed and re-crossed this river, and visited the different countries situated on its banks. He collected thus a large mass of intelligence, and arranged it with knowledge and industry, though not always, perhaps, with that skill, which only experience in such operations can teach. I am of opinion, that Mr. Bowdich's materials afford a fair promise of the solution of this great question,—but not exactly in the manner that he himself supposes. After the obliging manner in which he has repeatedly alluded to my "History of African Discoveries," he will not, I trust, suspect me of any intention to underrate his very valuable work, when I shall frankly state the points in which my opinion on this subject either agrees with or differs from his.

The intelligence of Mr. Bowdich, respecting the course of the Niger, as inferred from the reports of the natives and caravan merchants, may be thus briefly stated. The Niger, after passing through the lake Dibbie, separates, near Tombuctoo, into three branches. One called the Gambaroo, flows northward of east, through the countries of Houssa and Kassina, till it terminates in the great lake of Caudee or Chadee. Another, bearing the name of Joliba, flows northward to a country called Yahoode, which carries on a great trade with Tombuctoo. The third, or main stream, under the name of Quolla, rolls southward of east through Gauw, Zamfara, Noofee, Boussa, and other countries, till, after a long course, it also separates. One branch rolls eastward, and, turning to the north, forms the Egyptian Nile; the other flows southward, and again separating, pours itself into the southern Atlantic ocean by several channels, of which the Congo is the principal.

In suggesting some modifications upon this statement, it will be necessary to treat successively of the different lines of river course, delineated from this report of the African merchants.

1. The Gambaroo. The existence of this river, and the fact that there are two great parallel streams, instead of one, running through the region east of Tombuctoo, forms a most important and unexpected accession to our knowledge of its geography.\* There cannot, it should seem, be the smallest doubt as to there being such a river; for all the merchants who gave routes to Houssa, Haasina, and other countries north of the Niger, positively state, that, after having crossed the main stream of the Niger, they come, in ten or twelve days, to this other great river. But, with regard to its being a branch separated from the Niger, and like it flowing eastward, there appears greater room for doubt. It may be first remarked, that this early and permanent separation of a great river into two branches, is a phenomenon very contrary to the general analogy of nature. Without inquiring into the circumstances in the structure of the globe which render it so, it need only be observed, that among all the multitude of known rivers, there occurs only one authenticated instance. This is the canal of the Cassequaire, connecting the Orinoco with the Rio Negro, which is on too small a scale, and under circumstances too peculiar, to form almost any exception to the general rule. The improbability is much increased, when we find the same authority representing the Gambaroo itself as immediately separating, and this excessively rare phenomenon as taking place twice within so short a space.

It may be urged, indeed, as such a separation is not absolutely impossible, that, if supported by positive testimony, its existence cannot

\* The fact discovered by Mr. Bowdich, of De Lisle, in 1707, having delineated a river near Tombuctoo, under the name "Gambaron ou Niger," is very curious. The notice of such a river by D'Anville, which he refers to as mentioned in my work, exists, as he supposes, only in delineation. I apprehend, however, that the Gama of Marmol is the Gambia, which often bears that name in the old writers.

be rejected. But we must here remark certain defects in that mode of evidence upon which Mr. Bowdich proceeded, so far as it is applied to ascertain the course and direction of rivers. It was derived entirely from land travellers, to whom the direction of the stream is never an object of any importance. In tropical countries it is not even very observable, unless during the rainy season, when travelling is rarely practised. To a man placed at the confluence of two or more streams, there is even a tendency to use language directly the reverse of the real fact; imagination naturally suggesting them as branches issuing from a trunk. Thus, a Jenne merchant, quoted by the editor of Adams, p. 197, says:—“La separation des deux rivières, est à une demi lieue de Genné, et Genné se trouve entre les deux rivières comme une île. Une de ces rivières court dans le Bambarra, et l'autre va à Beto.” These two rivers are evidently the Joliba and Ba Niama of Park, which flow to Jenne and not from it; and the informant was probably aware that they did so, but was led by the analogy above mentioned to use this language. Instances of similar forms of expression are by no means uncommon, even in European writers.

The mere consideration of these circumstances, seems to render it much more probable that these rivers are tributaries falling into the Niger, than branches issuing out of it. There is not wanting positive testimony to the same effect. The Gambaroo being, according to Mr. Bowdich, the river which passes close by Tombuctoo, must be Mar Zarab of Adams, who, though not quite positive on the point, yet, in opposition to his examiners, obstinately stated a “preponderating belief,” that this river flowed to the south-west.\* The Gambaroo must also have been viewed as the Niger by Leo, who, though he had heard contrary rumours, professes a strong belief, derived from observations made during his residence at Tombuctoo, that its course was westward. These testimonies and presumptions combined, leave, I think, very little doubt upon the subject, till some more precise report be obtained, I do not wish it to be considered as absolutely certain.

If we suppose that the Gambaroo rolls westward, and falls into the main stream of the Niger, we shall obtain at once a solution of all the mysteries and contradictions which have perplexed this branch of African geography. It appears from Mr. Bowdich's statements, that Kano and Wangara (described to him under the name of Oongoro) lie upon the north bank of the Gambaroo: consequently the Gambaroo must have been the Nile of the Negroes of the Arabians, who always represented that river as flowing westward through these countries. It must, as already noticed, have been the Niger of Leo, represented by him also as skirting the same countries, and as flowing westward. From the position with regard to Kassina, it must have been the river referred to as the Niger by the informants of Mr. Lucas, who described it as flowing in the same direction. From these collected testimonies, I was led, on a former occasion, to observe, that the contradictory accounts on the subject could only be reconciled by the supposition of two rivers flowing through this region, one east and the other west; though he had then no data which could lead him to suspect that the point of junction could be at or near Tombuctoo.

2. The Joliba.—It appears somewhat odd, that two rivers so near to each other as this and the Joliba of Park, should bear the same name. Without enquiring whether there be not here some mistake, we may remark, that the present river is very probably the Goach Zayr of Sidi Hamet, which, if the Negro Zayr be changed to the Moorish Ba, will have a sound nearly similar. In that case it must flow chiefly from the west, which is rendered probable by other circumstances. Yahoodee, I presume to be Hoden, a mart in the western part of the desert, which has long carried on a great trade with Tombuctoo in salt.

The main stream of the Niger bearing, according to Mr. Bowdich, the name of Quolla. This is another instance of the perplexing transformations to which words transferred from the Arabic language are liable. I agree with Mr. Bowdich in thinking, that this name of Quolla is essentially the same with Joli, between which a link is formed by the name of Colle, applied to the Niger by De Barros. I concur also in the opinion, that the Kulla of Browne is probably the very same name, river, and country. Its course is said to be southward of east, which confirms the authority of Sidi Hamet, who first reported that direction to Riley;† and also agrees with Browne.

\* Adams' testimony has been strongly controverted by statements from America, which undertake to prove that he never could have been at Tombuctoo, (see Edinburgh Magazine for October 1818). It is much corroborated, however, by Mr. Bowdich, who confirms the name of the river Zahmer (evidently the same as Mar Zarab), and the reign of Woollo and Fatima or Fatouma, as king and queen of Tombuctoo. These names were quite unknown in Europe when Adams gave his testimony, so that if he never was at Tombuctoo, he must have at least have had some good original information respecting that city.

† Supplement to Encyclopædia Britannica, art. AFRICA.

‡ He likewise concurs as to its finally taking a southern direction. Mr. Bowdich did not hear of Wassanah; but African names undergo so many transformations, that much importance cannot be attached to this circumstance. Okandee, or Osanga, might have undergone such a change.

In regard to the termination of the Quolla or Niger, Mr. Bowdich found only one opinion among the merchants in Ashantee, as Mr. Jackson had found in Morocco, and Mr. Horneman in Fezzan. They all considered it as the same stream with the Egyptian Nile. Such a general concurrence, though it cannot induce our assent to the opinion, seems at least a motive to state anew the grounds on which it is rejected. I would first remark, in addition to the defects already noticed in the testimony of land travellers, their imperfect view of the continuity of rivers. When, after travelling along the bank of one river, they strike off and come to another running in the same line, and perhaps the same direction, they are exceedingly apt, without further evidence, to consider both as one and the same. Hence the extreme difficulty which Europeans long found in distinguishing between the Senegal and Niger, though running in opposite directions, merely on account of their proximity, and forming apparently part of the same line. In several routes collected by Mr. Bowdich himself, the Niger is represented as flowing along the frontier of Footh Jallo and Footh Jorra, which shews that the Falme, the Senegal, and even the Gambia have been viewed as branches of it. The report of a land-traveller, therefore, as to the course of any river, unless so far as he has actually crossed or coasted along it, is to be considered a mere speculation, or rumour, till it is confirmed by farther evidence. Now, it appears by Mr. Bowdich's routes, that the merchants are not at all in the habit of travelling along the continuous line of this supposed river. They strike off as it approaches the Caudée Lake, and travel through Begherme, Darfoor, and Wadey towards Sennar. Thus leaving the Niger flowing eastward, and coming, after a considerable interval, to the Bahr-el-Abiad, flowing also eastward, their imagination is very naturally led to unite these two streams, though separate, into one.

In opposition to the reports, or more properly opinions of persons living 1000 or 1500 miles from the spot, may be placed the testimony of Browne, an active and intelligent inquirer, who resided for six months in the capital of Darfoor, about 200 miles from the line which the Niger must follow in making this supposed junction. He heard nothing of it, however, but, on the contrary, received a particular account of the origin of the Bahr-el-Abiad, as derived from a number of torrents descending from the Mountains of the Moon. This perfectly agrees with the delineation of Ptolemy, who, though not perhaps nearer than Egypt, resided constantly in that country, and was habitually occupied in geographical inquiries. These two testimonies, therefore, decidedly outweigh those of the merchants in the western extremity of Africa. The truth is, however, when we come to any precise statement on the part of the latter, they are found to be completely at variance with the inference which they have deduced from them. A Moorish merchant, indeed, assured Mr. Jackson, that he, with a party of his friends, made a voyage by water along the Nile from Jenne to Cairo; but, he added, that in several places they found its channel almost dry, and were obliged to carry the boats over land. There are certainly some rare instances where a river may continue to flow without receiving accessions, and may even sustain some diminution. But that a stream so mighty as that which is universally described to flow through the heart of interior Africa, should dwindle into a paltry a brook, as not to float a canoe that can be carried on men's backs, is what no one I think can be so credulous as to imagine. A person of credit also assured Mr. Horneman, that the communication of the Niger and the Nile is ‘very little, unless in the rainy season.’ This evidently gives up the identity of the two rivers, and implies merely some small connecting cut, like that of the Cassiquaire. This is no doubt possible, though I think not probable, considering the rarity of the occurrence, and the mountainous character of the country described by Browne, to intervene between Darfoor and the sources of the Bahr-el-Abiad.

This hypothesis being disposed of, and there being no mention of any great lake or inland sea upon the course of the Quolla, there appears no alternative but that of its discharge into the southern Atlantic. Upon this subject the Ashante merchants had nothing to say; but Mr. Bowdich having resided for some months at Gaboon, obtained some important information respecting the rivers of that part of Africa. The natives mentioned the Wola, as a river considerably to the north of their country, as the greatest river in the world, four or five miles wide, and flowing to the eastward. There can seemingly be no doubt as to this being the same river called by the Moors Quolla. Another river, called the Ogoaway, was also described as communicating with the Wola, and then rolling southwards through the interior. After pursuing a long and winding course through vast savannahs, it was said to separate into two branches, the largest of which formed the main stream of the Congo, while the smaller one discharged itself into the ocean at Cape Lopez. This would form certainly a very large Delta, which could, however, be less wondered at, as the river, previous to separation, would have held a longer course than any other perhaps in the world. The Gaboon and Danger form two other estuaries, the origin of which is unknown, and which may possibly form part of the same great Delta. Much in short remains to be cleared up; but, upon the whole, the probability seems very strong, that this celebrated stream must find its way by more than one channel into the southern Atlantic.

## Entertainment.

Having no hand to which to delegate the labours of our vacation in cases of accidental interruption, from what ever cause they may spring, we are obliged to confess frankly that we entered so deeply into the spirit of the Entertainment given to the Marchioness of Hastings on Tuesday evening, which continued till almost dawn, as to have lost our usual morning hours of application, which the hurry and pressure of other claims than mere writing, have prevented our being able to recover throughout the remainder of the day, and left us not a moment to pen even a line on the subject.

This delay will be of the less consequence, inasmuch as to our Town readers, such a detail would be entirely unnecessary; as their recollections must furnish them a more general and better review of the whole, than any thing we could say would effect. Our Friends in the interior must, however, be pleased to learn the elegance, the taste, the enthusiasm, displayed on this occasion; and for them, we shall endeavour to prepare a brief outline for to-morrow.

## Choral Ode.

*Written and composed in honor of the Marchioness of Hastings, and Sung at the Entertainment given to Her Ladyship by the Settlement, at the Town-Hall, on Tuesday Evening the 7th of December, the Birth-day of her Illustrious Consort.*

### I.

#### STROPHE.

Genius of Harmony! descend,  
To swell the sacred pomp of Song,  
Hither thine airy footsteps bend,  
To pour the paean-shout along—  
Tis Hastings the proud theme inspires,  
Commanding every heart's acclaim,  
Awake, then, all the heavenly strain,  
To honor this illustrious name.

#### CHORUS.

See, by her side, her warrior Lord,  
Triumphant sheathed—his conquering sword,  
Back to her fondest wishes given,—  
Revered,—beloved,—approved of Heaven.

### II.

#### ANTISTROPHE.

For Her—the festive board we spread,  
For Her—invoke fair Fancy's reign,  
For Her—the sportive Dance we lead,  
Pleasure still following her train—  
And lo! where 'mid her favored band,  
Their mingling smiles irradiate round,  
Joy waves his bright creative wand,  
And strews with flowers th' enchanted ground.

#### CHORUS.

Then weave the wreath of brightest hues,  
Bathed in Affection's purest dew,  
Of freshest—sweetest—buds that grow,  
And bind it round her honored brow.

### III.

#### EPODE.

But stay!—Bid yet another strain  
Waft its high swell from zone to zone,  
Harp of the Heart!—awake again,  
Bid every chord enrich its tone;—  
This is the joy-inspiring day,  
That gave th' immortal Hastings birth,  
And sped him on his destined way  
To scatter bounties o'er the Earth,

#### CHORUS.

Then oh! to grace this Feast of Soul,  
Fill higher yet th' overflowing bowl;  
Th' exulting Song still higher rise  
To rend with joy th' approving skies!

Calcutta, Dec. 9, 1819.

J. S. B.

Printed at the Union Press, in Graslin's Buildings, near the Bankhall and the Exchange.

## STANZAS.

*Adapted to the beautiful Air of "Montalembert," attempting to embody the sentiments and feelings suggested by its soothing strain, as heard during a calm at Sea.*

### I.

When the Ocean's storms are dene,  
And all around is peaceful calm,  
As Evening's blush, at setting sun,  
Sheds o'er the scene a holier balm,  
The soul instinctive turns to Heaven,  
Filled with pure devotion's glow,  
And humbly hopes its sins forgiven,  
Above this world of doubt and woe.

### II.

When the milder Twilight dies,  
And every billow sinks to rest,  
As stars begin to light the skies,  
And Day sinks deeper in the west,  
Then the heart will homeward turn,  
To distant, dear, and long-loved Friends,  
And light with fires that holy urn  
Whose incense pure to Heaven ascends.

### III.

When at Midnight's hallowed noon,  
The rich cerulean vault above  
Yields to the bright meridian Moon  
Her tranquil reign o'er Night and Love,  
Bosoms then with fervour glowing,  
Pour their silent plaint along  
Till through every pulse are flowing  
Passion,—Music,—Sigh,—and Song.

### IV.

Theo my pensive breast inspiring,  
As o'er trackless deeps we steer,  
When on deck, at eve retiring,  
Montalembert's strains I hear;  
Thus can Music's magic power  
Lift the soul to realms above,  
And mingle, in one silent hour,  
Devotion,—Friendship,—Home—and Love.

Calcutta, Nov. 7, 1819.

J. S. B.

## TO A LADY.

I.  
When Flattery's burnished plumes expand  
Rich in the tints of Iris' bow,  
And Falsehood lends a willing hand  
To give those tints a brighter glow,

### II.

Fly, fly the Fiend, for every wreath  
That round her flower-crowned brows are twined  
Conceal their honied folds beneath,  
The poison of a noble mind

### III.

But oh! when Truth, in simple lay,  
Pure as the fount from whence she springs,  
The tribute of the heart shall pay,  
And warmly feel whate'er she sings,

### IV.

Then, Lady! even thou may'st bear  
The lisings of her artless tongue,  
Nor close thy chaste o'ercautious ear,  
To stains by Truth and Feeling sung.

### V.

But when my soul to thine would turn,  
Invoking all the powers of Song,  
I feel the flame so warmly burn,  
That fetters bind my trembling tongue.

### VI.

Thus, as Apelles vainly tried  
To paint what sorrowing matrons feel,  
And finding all his powers defied  
Drew o'er the mourner's face a veil,

### VII.

So o'er th' emotions of my heart  
Let Silence draw her veil for ever,  
And stilled feeling thus impart  
A tie that shall be broken never!

Calcutta, Sept. 7, 1819.

J. S. B.